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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

**GODWIN AGBIM and
ANTHONY WHEATLEY**

Case No.: 2:22-cv-5626

Plaintiffs,

v.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

SELECT HOME WARRANTY, LLC

Defendant.

COMPLAINT

GODWIN AGBIM (“Mr. Agbim”), and ANTHONY WHEATLEY (“Mr. Wheatley”) (hereinafter collectively referred to as “Plaintiffs”) by and through their attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against SELECT HOME WARRANTY, LLC (“Defendant”):

INTRODUCTION

1. Plaintiffs Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising

under the laws of the United States. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

3. Defendant maintains its corporate headquarters in New Jersey.
4. Accordingly, this Court has personal jurisdiction over Defendant in this matter.
5. Furthermore, venue is proper under 28 U.S.C. § 1391(b)(1).

PARTIES

6. Mr. Agbim is a natural person residing in Richmond, Texas.
7. Mr. Wheatley is a natural person residing in South Holland, Illinois.
8. Plaintiffs are “persons” as that term is defined by 47 U.S.C. § 153(39).
9. Select Home Warranty, LLC is a limited liability company that has its principal place of business, head office, or otherwise valid mailing address at One International Blvd., Mahwah, New Jersey 07495.

10. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).
11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS FOR PLAINTIFF GODWIN AGBIM

12. At all times relevant hereto, Mr. Agbim owned a cellular telephone, the number for which was (832) XXX-4932.
13. At all times relevant hereto, Mr. Agbim primarily used that cell phone for residential purposes.
14. Mr. Agbim registered the cell phone number ending in 4932 on the Do Not Call Registry on or around December 29, 2019.

15. Mr. Agbim registered his cell phone number on the Do Not Call list in order to obtain solitude from unwanted telemarketing and solicitation calls.

16. Beginning on or around March 30, 2020, Defendant began calling and texting Mr. Agbim for solicitation of their home warranty plan.

17. Prior to receiving the calls from Defendant, Mr. Agbim never sought information about home warranties, specifically the home warranty that Defendant sought to sell Mr. Agbim.

18. Mr. Agbim did not consent to being contacted by Defendant.

19. Despite the foregoing, Defendant placed calls and sent multiple texts to Mr. Agbim soliciting warranty services and products Mr. Agbim did not want or need.

20. The calls were not made for “emergency purposes,” but rather for telemarketing purposes.

21. In total, Defendant sent at least seven solicitation text messages to Mr. Agbim after his number was registered on the Do Not Call registry for at least 30 days.

22. Each text message promoted Defendant Select Home Warranty’s website with a message: “Protect your savings” or “Coverage for your home” or just the name of Defendant with a phone number to call.

23. An inexhaustive list of those text messages to Mr. Agbim’s cell phone is below:

Date:	Caller ID:
March 30, 2020 at 1:46 PM	305-910-2267
March 31, 2020 at 4:04 PM	305-910-2267
April 1, 2020 at 2:31 PM	305-910-2267
April 2, 2020 at 2:17 PM	305-910-2267
April 3, 2020 at 1:56 PM	305-910-2267
April 6, 2020 at 4:32 PM	305-910-2267
April 7, 2020 at 1:29 PM	305-910-2267

24. Upon information and belief, Mr. Agbim received additional calls and texts from Defendant not included in the above.

25. Mr. Agbim knew the identity of the caller as it was clearly displayed on the solicitation text messages.

26. As a result of the foregoing, Mr. Agbim experienced frustration, annoyance, irritation and a sense that his privacy had been invaded by Defendant.

FACTUAL ALLEGATIONS FOR PLAINTIFF ANTHONY WHEATLEY

27. At all times relevant hereto, Mr. Wheatley owned a cellular telephone, the number for which was (708) XXX-0210.

28. At all times relevant hereto, Mr. Wheatley primarily used that cell phone for residential purposes.

29. Mr. Wheatley registered his cell phone with the Do Not Call Registry on or around March 19, 2019.

30. Mr. Wheatley Registered his cell phone on the Do Not call list to obtain solitude from invasive and harassing telemarketing calls and texts.

31. Beginning on or around June 1, 2020, Defendant sent series of text messages to Mr. Wheatley's cell phone.

32. Each text message displayed Defendant Select Home Warranty's name and invited Mr. Wheatley to click on a link to purchase Defendant's home warranty.

33. Prior to receiving the texts from Defendant, Mr. Wheatley never sought information about home warranties, specifically the home warranty that Defendant sought to sell Mr. Wheatley.

34. Mr. Wheatley did not consent to be contacted by Defendant.

35. Defendant's text messages were not sent for "emergency purposes."

36. Each text message promoted Defendant Select Home Warranty's website with a message: "Protect your savings" or "Coverage for your home" or just the name of Defendant with a phone number to call.

37. An inexhaustive list of those text messages to Mr. Wheatley's cell phone is below:

Date:	Caller ID:
June 1, 2020	305-910-2267
June 3, 2020	305-910-2267
June 6, 2020	305-910-2267
June 7, 2020	305-910-2267
June 8, 2020	305-910-2267
June 18, 2020	305-910-2267

38. Upon information and belief, Plaintiff Wheatley received additional calls and text messages not reflected in the above chart.

39. Mr. Wheatley knew the identity of the caller as it was clearly displayed on the solicitation text messages.

40. As a result of the foregoing, Mr. Wheatley experienced frustration, annoyance, irritation and a sense that his privacy had been invaded by Defendant.

**PERMISSIVE JOINDER UNDER
FEDERAL RULE OF CIVIL PROCEDURE 20(a)**

41. Under Federal Rule of Civil Procedure 20 (a) (1), plaintiffs "may join in one action as Plaintiffs if...they assert any rights to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and...any question of law or fact common to all plaintiffs will arise in the action."

42. Plaintiffs' claims involve common questions of law and fact related to the acts and omissions of a common defendant.

43. Plaintiffs are pursuing damages severally.

44. It is in the interest of efficiency and judicial economy to have one set of events and occurrences including briefing, discovery, deposition of a corporate representative, and pre-trial submissions rather than to have two cases operating on separate schedules with similar questions of law and fact and the same defendant.

45. Accordingly, Plaintiffs join their actions pursuant to Fed. R. Civ. P. 20(a).

COUNT I
Defendant Violated the TCPA 47 U.S.C. § 227 (c)(5)
(Plaintiff Godwin Agbim v. Select Home Warranty)

46. Plaintiffs incorporate the forgoing paragraphs as though the same were set forth at length herein.

47. The TCPA prohibits any person or entity of initiating any telephone solicitation to a residential telephone subscriber who has registered his or his telephone number on the National Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200 *et. seq.*

48. Defendant placed solicitation calls and texts without express written consent to Mr. Agbim the fact that his number was registered on the Do Not Call Registry since 2019.

49. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Mr. Agbim.

50. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

51. As a result of the above violations of the TCPA, Mr. Agbim has suffered the losses and damages as set forth above entitling him to an award of statutory, actual and trebles damages.

Wherefore, Plaintiff, **Godwin Agbim** respectfully prays for judgment as follows:

- a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. § 227(c)(5);
- b. Additional statutory damages of \$500.00 per violative telephone texts (as provided under 47 U.S.C. § 227(c)(5)(B);
- c. Additional treble damages of \$1,500.00 per violative telephone texts (as provided under 47 U.S.C. § 227(c)(5)(C);
- d. Injunctive relief (as provided under 47 U.S.C. § 227(c); and
- e. Any other relief deemed reasonable by the Court.

COUNT II

Defendant Violated the TCPA 47 U.S.C. § 227(c)(5) ***(Plaintiff Anthony Wheatley v. Select Home Warranty)***

52. Plaintiffs incorporate the forgoing paragraphs as though the same were set forth at length herein.

53. The TCPA prohibits any person or entity of initiating any telephone solicitation to a residential telephone subscriber who has registered his or his telephone number on the National Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200 et. seq.

54. Defendant placed solicitation calls and texts to Mr. Wheatley's cell phone despite the fact his number had been on the Do Not Call Registry since 2019.

55. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Mr. Wheatley.

56. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

57. As a result of the above violations of the TCPA, Mr. Wheatley has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

Wherefore, Plaintiff, **Anthony Wheatley** respectfully prays for judgment as follows:

- a. All actual damages Plaintiff suffered, as provided under 47 U.S.C. § 227(c)(5);
- b. Additional statutory damages of \$500.00 per violative telephone texts (as provided under 47 U.S.C. § 227(c)(5)(B);
- c. Additional treble damages of \$1,500.00 per violative telephone texts, as provided under 47 U.S.C. § 227(c)(5)(C);
- d. Injunctive relief, as provided under 47 U.S.C. § 227(c); and
- e. Any other relief deemed reasonable by the Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiffs Godwin Agbim and Anthony Wheatley demand a jury trial in this case.

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

Respectfully,

DATED: September 16, 2022

By: /s/ Jacob U. Ginsburg
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